



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation on September 28, 2000

NOTICE OF ACTION TAKEN --DOCKET OST 2000-7904

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Notice of **DELTA AIR LINES, INC.** filed **9/6/00** to:

- (a) Use its authority to integrate its certificate and exemption authorities, granted May 5, 1999 (Docket OST-97-2338), for underlying authority to serve the New York-Tokyo and Los Angeles-Nagoya markets.
- (b) Move six U.S.-Japan frequencies allocated for Honolulu-Tokyo service and one frequency allocated to its Portland-Osaka/Fukuoka services for services in the New York-Tokyo market.
- (c) Move its Portland-Nagoya service to the Los Angeles-Nagoya market.

Delta states that, beginning April 1, 2001, Delta plans to begin nonstop service in the New York-Tokyo and Los Angeles-Nagoya markets. Delta further states that it already holds all of the frequencies and slots necessary for the proposed services and thus, that no carrier would be affected by its proposed service plans. Finally, Delta states that it will use landing slots now used in its Portland-Tokyo and Portland-Nagoya services for its proposed New York-Tokyo and Los Angeles-Nagoya services. Delta requests that the U.S. Government transmit the requisite bilaterally provided for advance notifications to the Government of Japan to effectuate the changes.

Answers to Delta's notice were filed by American Airlines and the Port of Portland.¹ Delta filed a consolidated reply. The Port of Portland filed a response to Delta's reply and Delta filed a further response.²

American does not oppose Delta's notice, but notes its own desire to serve other U.S.-Tokyo markets, including the New York-Tokyo market, and the inability to do so due to slot restrictions at Narita. It urges the Department to resume efforts to get more slots for U.S. carriers to serve Tokyo.

In its initial pleading, the Port of Portland seeks a delay in the transfer of the Portland-Japan slots until October 1, 2001, so that Portland can recruit another carrier to serve Japan. Portland argues that it has been and continues to be a successful gateway to Japan; and that the Port of Portland has made significant infrastructure investments to support Delta's Portland-Asia services. Given these investments and the long-term support of the Portland community, Portland argues that it has an interest in the slots

¹ American's answer was accompanied by a motion for leave to file late. We will grant the motion.

² Delta's reply and the subsequent responsive pleadings were also accompanied by motions for leave to file otherwise unauthorized documents. We will grant the motions.

and should be afforded the additional time it requests to recruit another carrier before any services are moved out of Portland.

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In its reply, Delta sympathizes with Portland, but argues that Portland has presented no basis to withhold approval of Delta's requests. It maintains that carriers, not civic parties, hold rights to international route authority awarded by the Department and that the Department has no legal authority to require Delta to maintain its service at Portland or authority over the use of landing slots at a foreign airport, such as Narita.

In its response to Delta, Portland states that Delta has now more fully explained its proposal to switch services from Portland-Nagoya to the Los Angeles-Nagoya market and, based on that explanation, Portland no longer opposes Delta's notice with respect to Portland-Nagoya. Portland reiterates its objection, however, to Delta's proposal to use Portland-Tokyo slots for its planned New York-Tokyo services. It maintains that the slots were specifically awarded for the Portland-Tokyo route and that, thus, moving the slots is tantamount to moving the route. Portland further argues that Delta's proposed movement of the Portland-Tokyo route to New York is contrary to the provisions of the 1998 U.S.-Japan MOU. Portland contends, therefore, that the Department must simply deny the "switch" and make certain that Portland-Tokyo authority, with slots, can exist at least until October 1, 2001.

In its response to Portland, Delta notes Portland's changed position with respect to the Portland-Nagoya services. It contends, however, that Portland erroneously attempts to link Delta's Narita slots with its Portland frequencies. In this regard, Delta maintains that Narita slots are not governed by the bilateral, nor linked to a particular set of frequencies, and that its proposed use of the slots for New York service will put the existing slot resources to their highest and best use.

Applicant rep: **Robert E. Cohn 202-663-8060** DOT analyst: **Terri Bingham 202-366-2390**

DISPOSITION

XX Granted. (See Remarks)

The above actions were effective when taken: **September 28, 2000** ³

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Remarks: Under the terms of the route integration authority granted Delta, Delta has authority to combine services on its outstanding certificates and exemptions to serve new markets, subject to the condition that it first file notice of such service with the Department and the Department completes any necessary carrier selection procedures before it commences service in the new markets. Delta holds certificates to serve Tokyo on Route 754 and Nagoya on Route 586 and to serve Los Angeles and New York on various other Department certificates. We find that the integration of these authorities provides Delta with the necessary underlying economic authority to serve the proposed New York-Tokyo and Los Angeles-Nagoya markets, subject to the specific conditions of the route integration exemption, most

³ The U.S. will make the necessary advance notifications to the Japanese government.

notably the notice filing requirement. Upon review of that notice and the provisions of the U.S.-Japan aviation agreements and understandings, we have determined that no additional authority need be awarded for Delta to provide its proposed New York and Los Angeles services. We further note that the

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U.S. is entitled to switch the Portland-Nagoya route and frequencies to Los Angeles-Nagoya under Section I.C. of the 1989 Memorandum of Understanding between the United States and Japan. (*See also*, Part XI of the 1998 Memorandum of Understanding.)

We also find that Delta's requests to move frequencies from its authorized Honolulu-Tokyo and Portland-Osaka/Fukuoka services for its proposed New York-Tokyo service and from Portland-Nagoya to Los Angeles-Nagoya are consistent with the public interest. In Order 98-5-17, we found that it was in the public interest to authorize new services between the U.S. and Japan. Delta's plans to institute the New York and Los Angeles services are consistent with this objective. We note also that no U.S. carrier has opposed Delta's proposal. Therefore, in the circumstances before us, we find that Delta's planned use of its allocated frequencies is consistent with the U.S.-Japan bilateral regime and that no useful purpose would be served by engaging in carrier selection procedures.⁴

That said, we appreciate the Port of Portland's concerns. We are not persuaded, however, based on the circumstances of this case, that it is in the public interest to delay Delta's plans to institute its proposed new services. Notwithstanding the support that communities provide for air services, route authorities are awarded to carriers, not cities, and thus, as a practical matter, we can only rectify the decision by a carrier not to provide service in a specific foreign market if another eligible carrier applies for the authority. The eligible U.S.-Japan carriers were served with Delta's application, and none elected to contest the filing or to file an application of its own. In these circumstances, and taking into account the public benefits that derive from maximizing use of our bilateral rights, we do not find that it is in the public interest to withhold approval of Delta's requests. Saying this, however, we would add that should Portland recruit another eligible carrier to serve Portland, we would, of course, entertain a request by that carrier to institute service between Portland and Japan that is consistent with the provisions of the U.S.-Japan aviation agreement and understandings.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and consistent with Department policy; and (2) action taken was consistent with the public interest. We may amend, modify, or revoke the action taken in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

⁴ We have carefully reviewed Portland's arguments in its September 25 submission concerning the permissibility under the U.S.-Japan agreement for Delta to effectuate its proposed service adjustments and have concluded that all of the proposed changes are consistent with the bilateral agreement.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp